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AD HOC COMMITTEE ON THE ELABORATION
OF AN INTERNATIONAL CONVENTION
DEALING WITH THE SAFETY AND
SECURITY OF UNITED NATIONS AND
ASSOCIATED PERSONNEL
28 March-8 April 1994
Agenda item 5

ELABORATION, PURSUANT TO PARAGRAPH 1 OF GENERAL ASSEMBLY RESOLUTION 48/37 OF 9 DECEMBER 1993, OF AN INTERNATIONAL CONVENTION DEALING WITH THE SAFETY AND SECURITY OF UNITED NATIONS AND ASSOCIATED PERSONNEL, WITH PARTICULAR REFERENCE TO RESPONSIBILITY FOR ATTACKS ON SUCH PERSONNEL

Proposal by New Zealand and Ukraine

The delegations of New Zealand and Ukraine have prepared the document annexed hereto for the consideration of the Ad Hoc Committee established pursuant to General Assembly resolution 48/37 to elaborate an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel.

The document has been prepared in response to the requests made by a number of delegations during consideration of agenda item 152 of the forty-eighth regular session of the General Assembly, entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice" and by the Chairman of the Working Group established under that item, that the work of the Ad Hoc Committee would be facilitated if there was a single working document before the Committee.

In the draft convention annexed hereto, the delegations of New Zealand and Ukraine have sought to reconcile the approaches set out in documents A/C.6/48/L.2 and A/C.6/48/L.3 which reflected their individual national positions on the matters to be considered by the Ad Hoc Committee.

The draft convention represents the common basis upon which the New Zealand and Ukraine delegations have been able to respond to the generally recognized and urgent need for the elaboration of a new international instrument dealing with the safety of United Nations and associated personnel.

The delegations of New Zealand and Ukraine express the hope that the draft they have co-sponsored will be accepted as the basic working document of the Ad Hoc Committee and will enable the Committee to make early progress in the achievement of its mandate.

The two delegations reserve the right to make further proposals and suggestions during the course of the deliberations of the Ad Hoc Committee. In particular, the delegation of Ukraine considers that the draft convention should provide for the right of a country contributing troops and other personnel to a United Nations operation to recall such personnel in circumstances when their safety is endangered, and that the convention should address the issue of compensation to be paid in the event of death or injury to such personnel.

ANNEX

Preamble

General provisions

Article 1

Definitions

For the purposes of this Convention:

1. "United Nations personnel" means those persons in respect of whom this Convention applies in accordance with article 2.

2. "United Nations operation" means an operation established pursuant to a mandate approved by a resolution of the Security Council.

3. "Host State" means a State in whose territory the United Nations operation is conducted.

4. "Alleged offender" means a person as to whom there is sufficient evidence to determine prima facie that that person has committed one or more of the crimes set out in article 11.

Article 2

Application of Convention

This Convention shall apply in respect of:

(a) Persons deployed by the Secretary-General to participate in a United Nations operation, and includes:

(i) Military personnel;

(ii) Police personnel;

(iii) Associated civilian personnel;

(b) Persons deployed by the Secretary-General or a specialized agency or other organization or programme of the United Nations system to carry out activities in connection with a United Nations operation;

(c) Persons deployed by any other humanitarian organization or agency to carry out activities relating to a United Nations operation where such organization or agency is operating pursuant to an agreement with the Secretary-General.

Status of United Nations personnel

Article 3

Identification

For the purposes of identifying United Nations personnel, States Parties shall cooperate with the Secretary-General to ensure that the following measures are undertaken:

(a) The United Nations flag is hoisted in the headquarters, camps, posts and other premises and vessels of a United Nations operation and as otherwise decided by the Secretary-General or his representative in the host State;

(b) The emblem of the United Nations operation is made known throughout the territory of the host State;

(c) All ground, water and air transportation vehicles of a United Nations operation are marked by the emblem;

(d) United Nations personnel wear the emblem while carrying out their functions.

Article 4

Privileges and immunities of United Nations personnel

States Parties shall respect such privileges and immunities as United Nations personnel enjoy under existing international agreements and generally recognized principles of international law.

Article 5

Respect for laws and obligations of the host State

Without prejudice to their privileges and immunities and the requirements of their duties, nothing in this Convention shall be construed so as to derogate from the obligation of United Nations personnel to respect the laws and obligations of the host State.

Article 6

Applicability of international humanitarian law

1. In cases not covered by this Convention or by other international agreements, United Nations personnel remain under the protection of universally recognized principles of international law, in particular, norms of international humanitarian law.

2. Nothing in this Convention shall be construed so as to derogate from the responsibility of United Nations personnel to respect international humanitarian law.

Article 7

Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right of United Nations personnel to act in self-defence in accordance with relevant rules of engagement.

Duties of States

Article 8

Respect for international character

The Government of a host State and any administration exercising actual authority over territory in which a United Nations operation is conducted shall respect the exclusive international character of the responsibilities of United Nations personnel.

Article 9

Duty to ensure the safety and security of United Nations personnel

1. States Parties shall recognize a duty to take all appropriate measures to ensure the safety and security of United Nations personnel. In particular, States Parties shall take all appropriate steps to protect United Nations personnel who are deployed in their territory from attacks or other acts of violence.

2. In circumstances where a State Party is unable to exercise jurisdiction over persons responsible for attacks on United Nations personnel deployed in their territory, it shall cooperate with other States Parties, the Secretary-General and the Security Council to ensure that an alleged offender is dealt with in accordance with the provisions of this Convention.

3. If a host State is not a State Party to this Convention, the States Parties shall nevertheless remain bound by its provisions in their relations.

Article 10

States to cooperate in preventing crimes against United Nations personnel

States Parties shall cooperate in the prevention of the crimes set out in article 11, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes without or outside their territories;

(b) Exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 11

Crimes against United Nations personnel

1. The international commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations personnel likely to endanger his/her person or liberty;

(c) A threat to commit any such attack;

(d) An attempt to commit any such attack;

(e) An act constituting participation as an accomplice in any such attack, which includes organizing, or directing, or inciting others to commit any such attack, shall be made by each State Party a crime under its national law.

2. Each State Party shall make these crimes punishable by appropriate penalties which shall take into account their grave nature.

3. Nothing in paragraphs 1 and 2 above shall derogate from the obligation of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of United Nations personnel.

Article 12

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the crime is committed with respect to a national of that State, if that State considers it appropriate.

2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 11 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 16 to any of the States referred to in paragraph 1 above.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 13

Communication of information regarding alleged offenders

1. The State Party in which any of the crimes set out in article 11 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General and, directly or through the Secretary-General, to all other States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever one of the crimes set out in article 11 has been committed against any United Nations personnel, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit it, under the conditions provided for in its national law, fully and promptly to the Secretary-General and the interested State or States.

Article 14

Measures to ensure prosecution or extradition

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 above shall be notified without delay to the Secretary-General and, either directly or through the Secretary-General, to:

(a) The State where the crime was committed;

(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person permanently resides;

(c) The State or States of which the victim is a national;

(d) All other States concerned;

(e) Any relevant specialized agency or other organization, programme or agency.

3. Any alleged offender shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, which that person requests and is willing to protect that person's rights;

(b) To be visited by a representative of that State.

Article 15

Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without under delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 16

Arrangements for extradition of alleged offenders

1. To the extent that the crimes set out in article 11 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required, to establish their jurisdiction in accordance with article 12, paragraph 1.

Article 17

Mutual assistance in criminal proceedings

1. States Parties shall afford each other the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 11, including the supply of all evidence at their disposal necessary for the proceedings.

2. Paragraph 1 above shall not affect the obligations arising from the provisions of any other treaty, bilateral or multilateral, which governs or will govern, in whole or part, mutual assistance in criminal matters.

Article 18

Fair treatment for alleged offenders

Any person regarding whom proceedings are being carried out in connection with any of the crimes set out in article 11 shall be guaranteed fair treatment at all stages of the proceedings.

Article 19

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General, who shall transmit the information to other States Parties.

Article 20

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction and to encourage the study thereof by the civilian population, so that the provisions of this Convention may become known to the armed forces and to the civilian population.

Dispute settlement provisions

Article 21

Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, anyone of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

Final clauses

Article 22

Signature

This Convention shall be open for signature by all States.

Article 23

Ratification

This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General, depository of the Convention.

Article 24

Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General.

Article 25

Entry into force

This Convention shall enter into force ___ days after ___ instruments of ratification or accession have been deposited with the Secretary-General.

Article 26

Denunciation

A State Party may denounce this Convention by written notification to the Secretary-General.

Article 27

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General.

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23 March 1994

ENGLISH ONLY

AD HOC COMMITTEE ON THE ELABORATION
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Proposal by New Zealand and Ukraine

Corrigendum

Article 5

The title should read

Respect for laws and regulations of the host State

In the last line of the paragraph,

replace obligations by regulations

Article 11, paragraph 1

The first line should read

1. The intentional commission of:

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21 March 1994

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AD HOC COMMITTEE ON THE ELABORATION
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New York, 28 March-8 April 1994
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Working document submitted by Denmark, Finland, Iceland, Norway and Sweden

The Nordic countries have always been major contributors to the United Nations peace-keeping operations, and continue to be. Drawing upon this experience, the Nordic countries wish to contribute to the deliberations of the Ad Hoc Committee by submitting a set of elements which we believe should be included in any new legally binding instrument concerning the safety and security of United Nations and associated personnel.

The Nordic countries recognize the constructive contributions already made by New Zealand and Ukraine and believe that, through a combined effort of all participating States, the Ad Hoc Committee will be able to bring its work to a successful conclusion.

First element

(Conflict situations)

The new instrument should apply in all situations where United Nations or associated personnel are operating, be it in time of peace or during armed conflict, whether of an international or non-international character.

Second element

(United Nations personnel)

The persons covered by the new instrument should comprise all personnel authorized by the United Nations to participate in a peace-keeping or a peace-enforcement operation.

Personnel working for intergovernmental and non-governmental organizations undertaking humanitarian relief activities in areas where a United Nations operation has been launched should also be provided adequate protection.

Third element

(General safety clause)

Besides the protection offered under the new instrument, United Nations and associated personnel remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience. The exclusive international character of said personnel shall always be respected.

Nothing in the new instrument should create the implication that United Nations or associated personnel constitute a legitimate target for belligerent action.

Fourth element

(Armed conflicts)

The parties to an armed conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

United Nations and associated personnel or their property shall not be made the object of attack.

United Nations personnel shall at all times carry the distinctive emblem of the United Nations.

Fifth element

(Basic protection)

United Nations and associated personnel shall enjoy, as a minimum, protection from the following acts which shall remain prohibited at any time and in any place whatsoever:

(a) Violence to the life, health or physical or mental well-being of persons, in particular:

(i) Murder;

(ii) Torture of all kinds, whether physical or mental;

(iii) Corporal punishment;

(iv) Mutilation;

(b) Outrages to personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) The taking of hostages;

(d) Collective punishment;

(e) Threats to commit any of the foregoing acts.

This protection is without prejudice to that afforded by other instruments or customary rules of international humanitarian law as well as to any person's right to self-defence.

Sixth element

(Repression of breaches)

1. The States Parties undertake to enact and enforce any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the following acts (grave breaches), if committed against persons or property protected by the new instrument:

- Making the United Nations personnel, objects and localities the target of attack;
- Wilfully causing great suffering or serious injury to the body or health of a protected person, including rape;
- Unlawful deportation or confinement of a protected person;
- Wilfully depriving a protected person of the right of fair trial;
- The taking of hostages.

2. Each State Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, the breaches listed in paragraph 1, and shall as a first step bring such persons, regardless of their nationality, before an international criminal tribunal having jurisdiction with respect to the alleged breaches. It may also try these persons before its own court or, in accordance with the provisions of its own

legislation, hand such persons over for trial to another State Party concerned, provided such State Party has made out a prima facie case.

3. In all circumstances, the accused persons shall benefit from the safeguards of proper trial and defence.

Seventh element

(Dissemination and education)

The new instrument must provide for dissemination of the basic rules of international humanitarian law, in particular among armed forces, as well as for the teaching of those rules to all members of society. Legal advisers should as a general rule be attached to major military units.

Eighth element

(Reservations and accession)

1. The new instrument should not allow for reservations to any of its provisions.

2. The instrument should be open for accession by the United Nations and other international and regional organizations. It should also include provisions for an authority of a non-Party to undertake to follow its rules, without such an undertaking in any way implying a formal recognition of that non-Party.

If these and other elements could be thoroughly debated and identified during the first session of the Ad Hoc Committee, the relevant elements could be cast in the form of concrete articles - many of which are already available in existing drafts - to be considered in depth during the Committee's next session, with a view to submitting them for consideration and adoption during the forty-ninth regular session of the General Assembly in 1994.